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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1932.

No. 326.

J. H. STEPHENSON, ET AL., *Appellants*,

vs.

T. BINFORD, ET AL., *Appellees*.

JOINT MOTION OF APPELLANTS AND APPELLEES TO ADVANCE.

FULBRIGHT, CROOKER & FREEMAN,
Attorneys of Record for Complainant,

J. H. STEPHENSON, *and Complainant-intervenors*, W. S. FINNEGAN, P. E. ARNETT, B. E. ITES, V. C. BILBO, J. T. CARROLL and A. S. ROBINSON.

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ELBERT HOOPER, T. S. CHRISTOPHER, *Asst. Atty. Generals, Attorneys of Record for Respondents, Appellees herein.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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May it Please the Court:

Come now the appellants and appellees in the above entitled and numbered cause, and respectfully move this Honorable Court that this case be advanced for early hearing, and in support of their motion make the following brief statement of the matters involved and the reasons relied upon for the advancement:

I.

The Forty-second Legislature of Texas, at its regular session in 1931, enacted House Bill, 335, Chapter 277, page 480. The Act became effective on August 22, A. D. 1931.

Appellants assert they are contract carriers and are operating upon the highways of the State of Texas as such. They brought this action for the purpose of restraining the enforcement of said House Bill 335 as against them, contending that said Act was violative of certain constitutional guaranties.

The Act assailed places under the supervision and regulation of the Railroad Commission of Texas the contract carrier as well as the common carrier. It gives that Commission the right and authority of control and supervision over the business and operations of contract carriers by providing;

(a) That no person shall thereafter operate as a contract carrier unless he shall have received a permit from the Railroad Commission, and that such permit shall not be issued until the applicant shall have in all things complied with the requirements of the Act;

(b) That the permit shall be issued only after the Commission has determined that the proposed operation of any such contract carrier will not impair the efficient public service of a common carrier then adequately serving the same territory.

(c) That it is the duty of the Railroad Commission to prescribe minimum rates, fares and charges to be collected by such contract carriers which shall not be less than the rates prescribed for common carriers for substantially the same service;

(d) That it is the duty of the Commission to require such contract carriers to keep a set of accounts strictly in accordance with such classification of accounts and rules as may be prescribed by the Commission, and to file reports and such other data as the Commission may deem necessary.

Appellants contend that the aforementioned provisions of said Act, as applied to them, deprive them of their property without due process of law and deny to them the

equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

The case was tried on application for permanent injunction before a statutory three-judge court on the 8th day of June, A. D. 1932. The Court, one member dissenting, overruled the contention of appellants and denied in all things the application for permanent injunction. From that action of the majority of the Court, this appeal is being prosecuted.

II.

The Court found as a fact that appellants, and each of them, are engaged in the business of transporting property for hire by motor truck over the highways of the State of Texas as contract carriers. The Court further found that pursuant to the provisions of House Bill 335, the Railroad Commission of Texas promulgated minimum rates to be charged and received by contract carriers, and that these rates so prescribed as a minimum are higher than and in excess of the rates and charges fixed by the contract between appellants and their customers.

Appellants allege that the enforcement of said House Bill 335 will bring about a complete destruction of their respective said businesses as contract carriers. They instituted and brought this action not only for themselves, but also on behalf of all contract carriers in the State of Texas similarly situated. As respects these contract carriers not mentioned by name, the action is in the nature of a class suit.

The attack made upon the validity of this Act in this case has left the business of transportation by truck over the highways of the State of Texas as a contract carrier, and the regulation thereof, in a somewhat uncertain and unsettled state. It is both very important and highly desirous from the standpoint of appellants and appellees alike, that this unsettled state and its attendant problems be placed at rest. Appellants, on the one hand, have

valuable interests at stake and are threatened with the loss of same. Appellees, on the other hand, have found it very difficult to successfully enforce said Act because of said unsettled state. In this connection, appellants and appellees desire to show unto the Court that this condition of doubt and confusion has greatly harmed appellants in the conduct of their business and has likewise greatly hampered and retarded appellees in the enforcement of said Act, and that this unsatisfactory condition will continue to exist until this Honorable Court has adjudicated and placed its construction upon the asserted unconstitutional features of said Act.

III.

Appellants and appellees agree that the facts and circumstances in this case justify an advancement of the cause upon the calendar of this Court and an assignment for hearing at an early date.

WHEREFORE, appellants and appellees pray that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

FULBRIGHT, CROOKER & FREEMAN,
Attorneys of Record for Complainant,

J. H. STEPHENSON, *and Complainant-intervenors,* W. S. FINNEGAN, P. E. ARNETT, B. E. ITES, V. C. BILBO, J. T. CARROLL and A. S. ROBINSON.

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